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ALJ

SERVICE DATE - JUNE 9, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41687

GRAIN LAND COOP

---V---

CANADIAN PACIFIC LIMITED AND SOO LINE RAILROAD COMPANY  
D/B/A/ CP RAIL SYSTEM

**Decided:** June 5, 1997

On March 7, 1997, Grain Land Coop ("Grain Land") filed a Renewed Motion to Compel Responses, seeking to: overrule CP Rail System's ("CP") objections to discovery; compel full and complete responses, including supplementation of responses, to all discovery requests; require CP to disclose what data is kept in electronic form, and to provide such data in electronic form, upon request; and to require CP to identify and describe the substance of any document held under any asserted privilege.

Oral Argument was heard on the motion on April 17, 1997. CP objects to certain interrogatories because they seek customer-specific data about shippers other than Grain Land. CP asserts that 49 USC § 11904 prohibits the disclosure of this information.

49 USC § 11904 prohibits the disclosure of certain information to a person other than the shipper or consignee without the consent of the shipper or consignee. The information referred to is:

(b) The information referred to in subsection  
(a) is information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation under this part...that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee.

(2) This part does not prevent a rail carrier providing transportation subject to the jurisdiction of the Board under this part from giving information-

(1) in response to legal process issued under the authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another rail carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

The information sought by Grain Land consists of prohibited material. Grain Land argues that the Administrative Law Judge, acting on behalf of the Board, is similar to a court and therefore can order the disclosure subject to a protective order.

CP argues that the Board is not a court within the purview of the statutory prohibition and therefore the judge does not have the jurisdiction to compel production.

Grain Land is seeking waybill information that would cover shipments carried by CP during the period specified in the complaint. The material sought to be discovered appears reasonably necessary to enable the complainant to prepare its case. Grain Land states that it has four claims:

Under Section 11101, breach of common carrier obligation; 11121, failure to provide adequate car supply; 10702, unreasonable rates and practices; 10741, unreasonable discrimination.

Tr. At 12.

Thus, Grain Land seeks information that may lead to admissible evidence indispensable to its case but that information is protected material subject to Section 11904. I find Grain Land's argument that the Board (and consequently, the judge) is equivalent to a court unconvincing. I have considered the Board decisions cited by Grain Land in support of its argument but I find that they do not support Grain Land's

contentions. I agree with CP that I do not have jurisdiction to require that information protected by Section 11904 be released.

I find that the information is needed by Grain Land. However, I also find that if shipper and consignee names are redacted from the material sought, there would be no violation of the section. CP is ordered to make the information available to Grain Land with the names of shipper and consignee redacted at a time mutually agreed upon by the parties.

This decision is effective on the service date.

**By the Board, Jacob Leventhal, Administrative Law Judge**

**Vernon Williams  
Secretary**